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DRAFT LEGAL TEXT

The attached draft legal text is based on the Charlottetown Accord of August 28, 1992. It is a best efforts text prepared by officials representing all the First Ministers and Aboriginal and Territorial Leaders.

October 9, 1992



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PREFACE

The attached draft legal text is based on the Charlottetown Accord of August 28, 1992. It is a best efforts text prepared by officials representing all First Ministers and Aboriginal and Territorial Leaders. This draft includes amendments to the following constitutional acts:

- Constitution Act, 1867
- Constitution Act, 1871
- Alberta Act
- Constitution Act, 1982 (including section 16.1, a bilateral amendment by New Brunswick and Canada).

This draft is subject to final review and approval by First Ministers and Leaders to ensure its consistency with the Charlottetown Consensus Report. Officials have made best efforts to ensure that the policy decisions summarized in the *Consensus Report on the Constitution* of August 28, 1992 have been translated as accurately as possible, in both official languages, into legal text that will serve as the basis for formal constitutional amendments to be presented to Parliament and the provincial legislatures.

The following delegations participated in the drafting of the legal text:

Canada

Ontario

Quebec

Nova Scotia

New Brunswick

Manitoba

British Columbia

Prince Edward Island

Saskatchewan

Alberta

Newfoundland

Northwest Territories

Yukon

Assembly of First Nations

Inuit Tapirisat of Canada

Native Council of Canada

Métis National Council

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Constitution Act, 1867

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

Canada Clause

"2. (1) The Constitution of Canada, including the *Canadian Charter of Rights and Freedoms*, shall be interpreted in a manner consistent with the following fundamental characteristics:

- (a) Canada is a democracy committed to a parliamentary and federal system of government and to the rule of law;
- (b) the Aboriginal peoples of Canada, being the first peoples to govern this land, have the right to promote their languages, cultures and traditions and to ensure the integrity of their societies, and their governments constitute one of three orders of government in Canada;
- (c) Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition;
- (d) Canadians and their governments are committed to the vitality and development of official language minority communities throughout Canada;
- (e) Canadians are committed to racial and ethnic equality in a society that includes citizens from many lands who have contributed, and continue to contribute, to the building of a strong Canada that reflects its cultural and racial diversity;
- (f) Canadians are committed to a respect for individual and collective human rights and freedoms of all people;
- (g) Canadians are committed to the equality of female and male persons; and
- (h) Canadians confirm the principle of the equality of the provinces at the same time as recognizing their diverse characteristics.

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Role of legislature
and Government of
Quebec

(2) The role of the legislature and Government of Quebec to preserve and promote the distinct society of Quebec is affirmed.

Powers, rights and
privileges preserved

(3) Nothing in this section derogates from the powers, rights or privileges of the Parliament or the Government of Canada, or of the legislatures or governments of the provinces, or of the legislative bodies or governments of the Aboriginal peoples of Canada, including any powers, rights or privileges relating to language.

Aboriginal and treaty
rights

(4) For greater certainty, nothing in this section abrogates or derogates from the aboriginal and treaty rights of the Aboriginal peoples of Canada."

2. Section 4 of the said Act is repealed and the following substituted therefor:

Construction

"4. Unless it is otherwise expressed or implied, the name Canada shall be taken to mean Canada as constituted under the Constitution of Canada."

3. Section 17 of the said Act is repealed and the following substituted therefor:

Constitution of
Parliament of Canada

"17. There shall be one Parliament for Canada, consisting of the Queen, the Senate and the House of Commons."

4. Sections 21 to 36 of the said Act are repealed and the following substituted therefor:

Constitution of Senate

"21. (1) The Senate shall consist of sixty-two* senators of whom

(a) six shall be elected for each province, namely, Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Alberta, Saskatchewan and Newfoundland;

(b) one shall be elected for each territory, namely, the Yukon Territory and the Northwest Territories; and

(c) [Aboriginal representation].*

New provinces

(2) Notwithstanding subsection (1), where a new province is established from the Yukon Territory or the Northwest Territories, the new province shall be entitled to the same representation in the Senate as the territory had.

Summoning of Senate

22. The Governor General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon and call together the Senate.

Authority of Parliament in relation to Senate elections

23. (1) Subject to this Act, the Parliament of Canada may provide for all matters relating to the election of senators.

Authority of legislatures of provinces or legislative authorities of territories

(2) Subject to this Act, the legislature of any province or the legislative authority of any territory may provide for

(a) the indirect election of senators for the province or territory by the legislative assembly of that province or legislative authority of that territory, and all matters relating thereto;

* The number sixty-two is subject to future decisions on the number of guaranteed aboriginal seats. The issue of Aboriginal representation and voting powers of Aboriginal senators is to be discussed in the autumn of 1992, according to the Consensus Report.

	<p>(b) any special measures to provide for equal representation of male and female persons; and</p> <p>(c) the determination of electoral districts and the boundaries thereof in relation to the election of senators.</p>
Provincial or territorial law prevails	<p>(3) Where a law of Parliament and a law of a province or territory under paragraph (2)(a) or (b) conflict, the law of the province or territory prevails to the extent of the conflict.</p>
Law of Canada prevails	<p>(4) Where a law of Parliament and a law of a province or territory under paragraph (2)(c) conflict, the law of Parliament prevails to the extent of the conflict.</p>
Limitation	<p>(5) No law made under this section in relation to the direct election of senators shall apply in respect of a general election of senators for which the writs are issued within six months after the law receives the Queen's assent.</p>
Who may not sit as senators	<p>24. No Minister of the Crown and no member of the House of Commons, a legislative assembly of a province or a legislative authority of a territory may be elected, sit or vote as a senator.</p>
Election of Speaker of Senate	<p>25. (1) The Senate on its first assembling after a general election shall, as soon as is practicable, elect one of the senators to be Speaker.</p>
Vacancy in office of Speaker	<p>(2) Where the office of Speaker becomes vacant because of the resignation or death of the Speaker, or for any other reason, the Senate shall, as soon as is practicable, elect a new Speaker from among the senators.</p>
Speaker to preside	<p>(3) The Speaker shall preside at all meetings of the Senate.</p>

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Absence of Speaker

(4) In case of the absence for any reason of the Speaker from the chair of the Senate for a period of forty-eight consecutive hours, the Senate may elect another of its members to act as Speaker, and the member so elected shall, during that absence of the Speaker, have and execute all the powers, privileges and duties of the Speaker.

Quorum of Senate

26. (1) The presence of at least ten senators is necessary to constitute a meeting of the Senate for the exercise of its powers, and for that purpose the Speaker shall be counted as a senator.

Voting in the Senate

(2) Subject to this Act, questions arising in the Senate shall be decided by a majority of voices, and the Speaker shall not vote except when the voices are otherwise equal.

Bills materially affecting French language or culture in Canada

(3) For greater certainty, where the Speaker is a French-speaking senator for the purposes of section 36, the Speaker may vote when the votes are otherwise equal among French-speaking senators in relation to a bill that materially affects the French language or culture in Canada.

Duration of Senate

27. On the dissolution of the House of Commons the Senate also stands dissolved, and elections for the Senate shall take place at the same time as those for the House of Commons.

Approval by the Senate of appointments

28. (1) The Parliament of Canada may provide, in respect of any appointment made under its authority, that the appointment is subject to the approval of the Senate.

Head of central bank

(2) No one may be appointed as head of the central bank established by the Parliament of Canada unless the appointment is approved by the Senate.

Deemed approval

(3) An appointment that is subject to the approval of the Senate under this section shall be deemed to have been approved if the Senate has not voted to withhold its approval of the appointment within thirty sitting days after it has received a request for approval.

Rules relating to Passage of Bills

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Application of
general rule

29. (1) This section and sections 30 and 31 apply to all bills except

(a) revenue or expenditure bills, as defined in subsection 32(1);

(b) natural resources tax policy bills, as defined in subsection 34(1); and

(c) bills that materially affect the French language or culture in Canada.

Intergovern-
mental agreements

(2) Any bill to approve an agreement pursuant to section 126A shall be deemed to be a bill to which this section and sections 30 and 31 apply.

Powers and
procedures

(3) Except as otherwise provided in this Act, the powers and procedures of the Senate and the House of Commons in relation to the consideration and passage of bills under this section and sections 30 and 31 shall be parallel.

General rule for bills
defeated or amended

(4) Where a bill, having been passed by one House of Parliament, is defeated by the other or is passed by the other with amendments, the House of Parliament where the bill originated may

(a) concur in the amendments made by the other; or

(b) request that a reconciliation committee be established to consider the bill in the form in which it was originally passed in that House.

General rule for bills
not disposed of
within thirty sitting
days

(5) Where a bill, having been passed by either House of Parliament, is sent to the other House but is not disposed of within thirty sitting days after it is sent or within such longer period as may be agreed to by the Speaker of the House of Parliament where the bill originated, the House of Parliament where the bill originated may request a joint sitting of the Senate and the House of Commons to consider the bill in the form in which it was passed.

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Bills amending the
Constitution of
Canada

(6) Notwithstanding subsection (5) and subsection 30(4), no bill to amend the Constitution of Canada in relation to the Senate or the House of Commons may be enacted without the approval of each House of Parliament and no such bill may be sent to a joint sitting of the Senate and the House of Commons.

Rules for
reconciliation
committee and joint
sitting

(7) Subject to sections 30 and 31, the procedures to be followed by a reconciliation committee or a joint sitting of the Senate and the House of Commons shall be established by rules of the Senate and the House of Commons.

Equal number of
members to serve on
reconciliation
committee

30. (1) The Senate and the House of Commons shall each nominate an equal number of members to serve on any reconciliation committee.

Consideration of bill
by reconciliation
committee

(2) A reconciliation committee established to consider a bill may, within thirty sitting days after the request that the committee be established, report the bill to the Senate and to the House of Commons with or without amendments.

If Senate and House
of Commons approve
bill as reported

(3) If the Senate and the House of Commons each approve a bill as reported by a reconciliation committee, the bill shall be deemed to have been passed by the Senate and the House of Commons in the form in which it was reported by the reconciliation committee.

If bill not reported or
not approved by the
Senate or the House
of Commons

(4) If a reconciliation committee fails to report a bill under subsection (2), or if the Senate or the House of Commons does not approve the bill as reported within three sitting days after it is reported, the House of Parliament where the bill originated may request a joint sitting of the Senate and the House of Commons to consider the bill.

Joint sitting of the
Senate and House of
Commons

31. (1) On a request under subsection 29(5) or subsection 30(4) for a joint sitting of the Senate and the House of Commons to consider a bill, the Speakers of the Senate and the House of Commons shall forthwith convene the joint sitting to consider the bill.

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Speaker or delegate
to preside

(2) The Speaker of the House of Parliament where the bill under consideration originated, or the delegate of the Speaker, shall preside at meetings of any joint sitting convened under subsection (1) to consider the bill.

Consideration and
voting

(3) A joint sitting convened under subsection (1) shall without delay consider and vote on the bill for which it was convened, with such amendments as the joint sitting considers desirable or, in the case of a joint sitting convened pursuant to subsection 29(5), without amendment.

Time limit

(4) The final vote on a bill for which a joint sitting is requested shall take place within ten sitting days after the request is made or within such other period of time as may be agreed to by the Speakers of both Houses of Parliament, and in all cases reasonable time shall be allowed for debate by the joint sitting.

Where bill approved
by joint sitting

(5) Where a bill is approved by a majority of the senators and members of the House of Commons voting, taken together, in accordance with subsection (3), the bill shall be deemed to have been passed by the Senate and the House of Commons in the form in which it is approved.

Definition of "sitting
days"

(6) In subsection (4), "sitting days" means any days on which the House of Commons sits, either alone or in a joint sitting.

Definition of
"revenue or
expenditure bill"

32. (1) In this section and section 33, "revenue or expenditure bill" means a public bill that is designated on introduction as a revenue or expenditure bill by a Minister of the Crown and that contains only provisions dealing with the following:

- (a) the raising of revenues, including the imposition, repeal, remission, alteration and regulation of taxation,
- (b) the appropriation of public money,
- (c) charges on the Consolidated Revenue Fund,

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(d) the public debt, including borrowing authority,

(e) the guarantee of any loan or other debt or obligation, or

(f) subordinate matters relating to any of the matters set out in paragraphs (a) to (e),

but does not include a bill that contains provisions that would result in fundamental policy changes to the tax system.

Revenue or
expenditure bills
defeated in the Senate
or passed with
amendments not
concurred in by
House of Commons

(2) Where a revenue or expenditure bill, having been passed by the House of Commons, is defeated by the Senate or is passed by the Senate with amendments, the House of Commons may approve the bill in the form in which it was introduced in the Senate or with such amendments made by the Senate as are concurred in by the House of Commons, whereupon the bill shall, unless the House of Commons directs to the contrary, be deemed to have been passed by the Senate in the form in which it was finally approved by the House of Commons.

Revenue or
expenditure bills not
disposed of by the
Senate

(3) Where a revenue or expenditure bill, having been passed by the House of Commons, is sent to the Senate but is not disposed of by the Senate within thirty days after it is sent, the bill shall, unless the House of Commons directs to the contrary, be deemed to have been passed by the Senate in the form in which it was sent to the Senate.

Ruling by Speaker of
House of Commons

33. (1) Any member of the House of Commons or the Speaker of the Senate may request that the Speaker of the House of Commons consider whether a bill that has been designated as a revenue or expenditure bill is a revenue or expenditure bill, and the Speaker of the House of Commons shall, after consulting with the Speaker of the Senate, rule on the matter within five days after the request is made.

Certificate of the
Speaker

(2) There shall be endorsed on every revenue or expenditure bill when it is sent to the Senate the certificate of the Speaker of the House of Commons, signed by that Speaker, that it is a revenue or expenditure bill.

Idem

(3) A certificate of the Speaker of the House of Commons given under subsection (2) is conclusive for all purposes and shall not be questioned in any court of law.

Definition of "natural resources tax policy bill"

34. (1) In this section and section 35, "natural resources tax policy bill" means a bill that contains provisions that would result in fundamental tax policy changes that are directly related to natural resources or electrical energy.

Disposition of bill

(2) Where a natural resources tax policy bill is passed by the House of Commons and sent to the Senate, the Senate shall dispose of the bill within thirty sitting days after it is sent.

Where bill defeated in the Senate

(3) Where a natural resources tax policy bill, having been passed by the House of Commons, is defeated by the Senate, no further action may be taken on the bill.

Identification of bill

35. (1) A Minister of the Crown may, on introduction of a bill in the House of Commons, indicate that the bill is, in the opinion of the Minister, a natural resources tax policy bill.

Ruling by Speaker of House of Commons

(2) Any member of the House of Commons or the Speaker of the Senate may request that the Speaker of the House of Commons consider whether a bill that has been introduced in the House of Commons is a natural resources tax policy bill, and the Speaker of the House of Commons shall, after consulting with the Speaker of the Senate, rule on the matter within five sitting days after the request is made.

Certificate of the Speaker

(3) There shall be endorsed on every natural resources tax policy bill when it is sent to the Senate the certificate of the Speaker of the House of Commons, signed by that Speaker, that it is a natural resources tax policy bill.

Idem

(4) A certificate of the Speaker of the House of Commons given under subsection (3) is conclusive for all purposes and shall not be questioned in any court of law.

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Bills materially affecting French language or culture in Canada

36. (1) A bill that materially affects the French language or culture in Canada must, in order to be passed by the Senate, be approved by a majority of senators voting and a majority of French-speaking senators voting.

Quorum for vote of French-speaking senators

(2) A vote of French-speaking senators is not sufficient for the purposes of subsection (1) unless at least one-third of all French-speaking senators are present and voting.

Disposition of bill

(3) Where a bill described in subsection (1) is passed by one House of Parliament and sent to the other House, the House to which the bill is sent shall dispose of the bill within thirty sitting days after it is sent.

Where bill defeated in either House of Parliament

(4) Where a bill described in subsection (1) is defeated in either House of Parliament, no further action may be taken on the bill.

Exception

(5) This section and section 36A do not apply to revenue or expenditure bills, as defined in subsection 32(1).

Identification of bill

36A. (1) Any senator, on introducing a bill into the Senate, or any member of the House of Commons, on introducing a bill that originates in the House of Commons, may indicate that the bill is, in the opinion of the senator or member, a bill that materially affects the French language or culture in Canada.

Ruling by Speaker of Senate

(2) Any senator or the Speaker of the House of Commons may request that the Speaker of the Senate consider whether a bill materially affects the French language or culture in Canada and the Speaker of the Senate shall, after consulting with the Speaker of the House of Commons, rule on the matter within five sitting days after the request is made.

Certificate of Speaker

(3) There shall be endorsed on every bill that materially affects the French language or culture in Canada, when it is presented to the Governor General for the Queen's assent, a certificate of the Speaker of the Senate, signed by that Speaker, that it is a bill that materially affects the French language or culture in Canada and that it has received the requisite approval.

Idem

(4) A certificate of the Speaker of the Senate given under subsection (3) is conclusive for all purposes and shall not be questioned in any court of law.

French-speaking
senators

36B. (1) For the purposes of section 36, senators are, subject to subsection (2), French-speaking if they identify themselves to the Speaker as French-speaking on first taking their seats in the Senate.

Idem

(2) The Speaker of the Senate may resolve any dispute about whether a senator is French-speaking, and the decision of the Speaker is conclusive for all purposes and shall not be questioned in any court of law.

Definition of "sitting
days"

36C. In sections 28 to 30 and 34 to 36A, "sitting days" means any days on which the House of Commons sits."

5. Sections 51A and 52 of the said Act are repealed and the following substituted therefor:

Principle of
proportionate
representation in the
House of Commons

"51A. (1) In readjusting the number of members in the House of Commons, the Parliament of Canada shall be guided by the principle that the proportion of members of the House of Commons representing a province shall be based on the proportion of the population of Canada from that province.

Special rules relating
to the constitution of
the House of
Commons

(2) Notwithstanding anything in this Act,

(a) a province shall always be entitled to a number of members in the House of Commons not fewer than the number of senators by which the province was entitled to be represented on April 17, 1982;

(b) Quebec shall always be entitled to a number of members in the House of Commons that is no fewer than twenty-five per cent of the total number of members in the House of Commons;

(c) except as a result of the application of paragraph (b), no province shall have fewer members in the House of Commons than any other province that had, at the then latest general census, a smaller population;

(d) in any readjustment of the number of members in the House of Commons, no province shall have its representation reduced by more than one member; and

(e) the Yukon Territory and the Northwest Territories shall always be entitled to a number of members in the House of Commons not fewer than the number of members to which they were entitled on the coming into force of this section, and this entitlement applies to any new province established from either of them.

Increase of number in
House of Commons

52. Subject to section 51A, the number of members of the House of Commons may from time to time be increased by the Parliament of Canada."

6. Sections 55 to 57 of the said Act are repealed and the following substituted therefor:

Royal Assent to bills

"55. Where a bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, the Governor General shall declare, according to the discretion of the Governor General, but subject to Her Majesty's instructions, either that the bill is assented to in the Queen's name, or that the Queen's Assent is withheld."

7. Section 90 of the said Act is repealed and the following substituted therefor:

Application to
legislatures of
provisions respecting
money votes and
assent

"90. The provisions of this Act relating to the recommendation of money votes and the assent to bills in the Parliament of Canada apply to the legislatures of the provinces with the substitution of the Lieutenant Governor of the province for the Governor General and of the Governor General for the Queen."

8. The said Act is further amended by adding thereto, immediately after section 91 thereof, the following section:

Application of class
24 of section 91

"91A. For greater certainty, class 24 of section 91 applies, except as provided in section 95E, in relation to all the Aboriginal peoples of Canada."

9. (1) Paragraph (c) of class 10 of section 92 of the said Act is repealed and the following substituted therefor:

"(c) such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada, where authorized by resolution of the Legislative Assembly of the Province, to be for the general advantage of Canada or for the advantage of two or more of the Provinces."

(2) Section 92 of the said Act is further amended by adding thereto, immediately after class 12 thereof, the following:

"12A. Labour market development and training in the Province."

(3) Section 92 of the said Act is further amended by adding thereto, immediately after class 16 thereof, the following:

"And,

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(a) for greater certainty, any declaration made under paragraph (c) of class 10 and in force immediately before this paragraph comes into force remains in force until it is repealed in accordance with paragraph (b); and

(b) no declaration made under paragraph (c) of class 10 may be repealed by the Parliament of Canada except where authorized by resolution of the legislative assembly of the province within which the works in respect of which the declaration is made are situate."

10. The said Act is further amended by adding thereto,
immediately after section 92A thereof, the following heading and sections:

"Culture

Laws in relation to
culture

92B. (1) The legislature of each province may exclusively
make laws in relation to culture in the province.

National cultural
matters

(2) The Government of Canada retains its role in relation to
national cultural matters, including national cultural institutions and
grants and contributions delivered by such institutions.

Authority not
extended

(3) Nothing in subsection (2) extends the authority of the
Parliament of Canada.

Agreements on
culture with
provinces

92C. (1) The Government of Canada shall negotiate with the
government of any province that so requests an agreement on culture
for the purpose of ensuring that both governments work in harmony,
recognizing the lead responsibility of the province for culture in the
province.

Agreements on
culture with
territories

(2) The Government of Canada shall negotiate with the
government of any territory that so requests an agreement on culture for
the purpose of ensuring that both governments work in harmony.

Telecommunications

Agreements on
telecommunications

92D. The Government of Canada shall negotiate with the
government of any province or territory that so requests an agreement
on telecommunications for the purpose of coordinating and harmonizing
the procedures of their respective regulatory agencies."

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11. The said Act is further amended by adding thereto, immediately after section 93 thereof, the following heading and sections:

"Urban and Municipal Affairs, Tourism, Recreation, Housing, Mining and Forestry

Exclusive provincial
authority

93A. (1) It is hereby affirmed that the following matters in each province come within the exclusive legislative authority of the legislature of the province:

- (a) urban and municipal affairs;
- (b) tourism;
- (c) recreation;
- (d) housing;
- (e) mining; and
- (f) forestry.

Agreements to
withdraw from grants
and contributions

(2) The Government of Canada shall, at the request of the government of any province or territory, negotiate with that government for the purpose of concluding an agreement under which the Government of Canada is required to withdraw partially or completely as soon as is practicable from any program of grants or contributions in respect of the province or territory that relates to any of the matters listed in subsection (1) and is required to provide reasonable compensation to the province or territory.

Agreements to
constrain expenditures

(3) The Government of Canada and the government of any province or territory may enter into an agreement under which any expenditure of money in respect of the province or territory by the Government of Canada in relation to any of the matters listed in subsection (1) is constrained, whether or not the agreement relates to a withdrawal from a program of grants or contributions.

Maintenance of
spending

(4) Where an agreement is concluded with the government of any province or territory pursuant to subsection (2) or (3), the Government of Canada shall, at the request of the government of any other province or territory, negotiate with that government for the purpose of concluding an agreement under which the Government of Canada is required to maintain its expenditure of money in respect of that province or territory in relation to the matter that is the subject of the agreement.

Reasonable time

(5) Where a request is made under subsection (2) or (4), the Government of Canada and the government of the province or territory that made the request shall conclude an agreement within a reasonable time.

Equality of treatment
of provinces

(6) Where an agreement is being negotiated pursuant to this section, the province negotiating the agreement shall, with respect to the terms and conditions of the agreement, including compensation, be accorded equality of treatment in relation to any other province with which an agreement has been concluded pursuant to this section in relation to the same matter in the context of the different needs and circumstances of the provinces.

Equality of treatment
of territories

(7) Subsection (6) applies in respect of territories so as to accord a territory equality of treatment in relation to another territory in the context of the different needs and circumstances of the territories.

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Labour Market Development and Training

Negotiated
withdrawal

93B. (1) The Government of Canada shall, at the request of the government of any province or territory, negotiate with that government for the purpose of concluding an agreement under which the Government of Canada is required to withdraw partially or completely, as soon as is practicable, from any program or activity in respect of the province or territory that relates to labour market development or training, including labour market training in the province or territory under any unemployment insurance program or activity, and is required to provide reasonable compensation to the province or territory.

Withdrawal

(2) Where the government of a province or territory requests the Government of Canada to withdraw partially or completely from any program or activity in respect of the province or territory described in subsection (1), the Government of Canada shall, in accordance with the request, do so as soon as is practicable.

Unemployment
insurance

(3) For greater certainty, nothing in this section abrogates or derogates from the legislative authority of the Parliament of Canada in relation to unemployment insurance.

Job creation programs

(4) Nothing in subsections (1) and (2) precludes the Government of Canada from making expenditures on job creation programs.

Maintenance of
spending

(5) Where an agreement is concluded with the government of any province or territory pursuant to subsection (1), or the Government of Canada withdraws from a program or activity in any province or territory pursuant to subsection (2), the Government of Canada shall, at the request of the government of any other province or territory, negotiate with that government for the purpose of concluding an agreement under which the Government of Canada is required to maintain its expenditure of money in respect of that province or territory in relation to labour market development or training.

Reasonable time

(6) Where a request is made under subsection (1) or (5), the Government of Canada and the government of the province or territory that made the request shall conclude an agreement within a reasonable time.

Equality of treatment
of provinces

(7) Where an agreement is being negotiated pursuant to this section, the province negotiating the agreement shall, with respect to the terms and conditions of the agreement, including compensation, be accorded equality of treatment in relation to any other province with which an agreement has been concluded pursuant to this section in the context of the different needs and circumstances of the provinces.

Equality of treatment
of territories

(8) Subsection (7) applies in respect of territories so as to accord a territory equality of treatment in relation to another territory in the context of the different needs and circumstances of the territories.

National objectives
for labour market
development
programs and
activities

93C. (1) Where the Government of Canada withdraws from a program or activity pursuant to subsection 93B(1) or (2), the government of the province or territory that requested the withdrawal shall ensure that all labour market development programs and activities in the province or territory, considered together, are compatible with national objectives established under subsection (2) in the context of the different needs and circumstances of the provinces or territories.

Establishment of
national objectives

(2) For the purposes of subsection (1), the Government of Canada shall, from time to time, with the governments of the provinces and territories, establish national objectives in relation to national aspects of labour market development programs and activities, taking into account the different needs and circumstances of the provinces and territories.

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Regional Development

Negotiated agreement

93D. (1) The Government of Canada shall, at the request of the government of any province or territory, negotiate with that government for the purpose of concluding an agreement relating to regional development in that province or territory.

Reasonable time

(2) Where a request is made under subsection (1), the Government of Canada and the government of the province or territory that made the request shall conclude an agreement within a reasonable time.

Equality of treatment
of provinces

(3) Where an agreement is being negotiated pursuant to this section, the province negotiating the agreement shall, with respect to the terms and conditions of the agreement, be accorded equality of treatment in relation to any other province with which an agreement has been concluded pursuant to this section in the context of the different needs and circumstances of the provinces and, in particular, with regard to the need for a special focus on provinces, or regions within provinces, suffering the greatest disparities.

Equality of treatment
of territories

(4) Subsection (3) applies in respect of territories so as to accord a territory equality of treatment in relation to another territory in the context of the different needs and circumstances of the territories.

*Legislative Powers not Extended*Legislative powers
not extended

93E. Nothing in sections 93A to 93D extends the legislative powers of the Parliament of Canada."

12. The said Act is further amended by adding thereto,
immediately after section 95 thereof, the following heading and sections:

"Agreements on Immigration and Aliens"

Negotiated
agreements

95A. (1) The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

Reasonable time

(2) Where a request is made under subsection (1), the Government of Canada and the government of the province that made the request shall conclude an agreement within a reasonable time.

Equality of treatment

(3) Where an agreement is being negotiated pursuant to this section, the province negotiating the agreement shall, with respect to the terms and conditions of the agreement, be accorded equality of treatment in relation to any other province with which an agreement has been concluded pursuant to this section in the context of the different needs and circumstances of the provinces.

Agreements

95B. (1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

Limitation

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

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Application of
Charter

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

Proclamation relating
to agreements

95C. (1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

Amendment of
agreements

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(a) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(b) in such other manner as is set out in the agreement.

Application of
sections 46 to 48 of
Constitution Act,
1982

95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1) or any amendment to an agreement made pursuant to subsection 95C(2).

Métis and Métis
settlement lands in
Alberta

Métis and Métis Settlement Lands in Alberta

95E. In the context of section 91A, the legislature of Alberta may make laws, and the Parliament of Canada may make laws, in relation to the Métis in Alberta and to Métis settlement lands in Alberta and, where such a law of Alberta and a law of Parliament conflict, the law of Parliament prevails to the extent of the conflict."

13. The said Act is further amended by adding thereto, immediately before section 96 thereof, the following heading:

"General"

14. The said Act is further amended by adding thereto, immediately before section 101 thereof, the following heading:

*"Courts Established by
the Parliament of Canada"*

15. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

Supreme Court
continued

Composition

"Supreme Court of Canada"

101A. (1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice, to be called the Chief Justice of Canada, and eight other judges who shall be appointed by the Governor General in Council.

DRAFT

Who may be
appointed judges

101B. (1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of a province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

Three judges from
Quebec

(2) At least three of the judges shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

Names of candidates

101C. (1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province or territory may submit to the Minister of Justice of Canada the names of at least five candidates to fill the vacancy, each of whom is qualified under section 101B for appointment to the Court.

Appointment from
names submitted

(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

Appointment from
Quebec

(3) Where an appointment is made under subsection 101B(2), the Governor General in Council shall appoint a person whose name is submitted by the Government of Quebec.

Appointment from
other province or
territory

(4) Where an appointment is made otherwise than under subsection 101B(2), the Governor General in Council shall appoint a person whose name is submitted by the government of a province, other than Quebec, or of a territory.

Interim judges

101D. (1) Where a vacancy in the Supreme Court of Canada is not filled and at least ninety days have elapsed since the vacancy occurred, the Chief Justice of Canada may in writing request a judge of a superior court of a province or territory or of any superior court established by the Parliament of Canada to attend at the sittings of the Supreme Court of Canada as an interim judge for the duration of the vacancy.

Interim judge from
Quebec

(2) Where a vacancy in the Supreme Court of Canada results in there being fewer than three judges on the Court who meet the qualifications set out in subsection 101B(2), no judge may be requested to attend as an interim judge under subsection (1) unless the judge meets those qualifications.

Tenures, salaries,
etc., of judges

101E. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

Relationship to
section 101

101F. (1) Sections 101A to 101E shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

References to the
Supreme Court of
Canada

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

DRAFT

16. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

Shared-cost program

"106A. (1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

Legislative powers
not extended

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces.

Section 36 of
Constitution Act,
1982 not affected

(3) For greater certainty, nothing in this section affects the commitments of the Parliament and government of Canada set out in section 36 of the *Constitution Act, 1982*."

17. The said Act is further amended by adding thereto, immediately after Part VIII thereof, the following Part:

"VIII.1 INTERGOVERNMENTAL AGREEMENTS

No inconsistent laws

126A. (1) Where the Government of Canada and the government of one or more provinces or territories enter into an agreement that is approved under this section, no law made by or under the authority of the Parliament of Canada or of any legislature of a province or legislative authority of a territory that is a party to the agreement and has caused it to be approved under this section may amend, revoke or otherwise supersede the agreement while the approval of the agreement remains in force.

Approval

(2) An agreement is approved when the Parliament of Canada and the legislature of a province, or the legislative authority of a territory, that is a party thereto have each passed a law that approves the agreement and that includes an express declaration that this section applies in respect of the agreement.

Amendment,
revocation, etc.

(3) An agreement approved under this section may be amended, revoked or otherwise superseded only in accordance with its terms or by a further agreement approved under this section.

Duration of approval

(4) An approval under this section expires no later than five years after it is given, but may be renewed under this section for additional periods not exceeding five years each.

Equality of treatment
of provinces

(5) Where an agreement between the Government of Canada and the government of any province is approved under this section, the Government of Canada, at the request of the government of any other province, shall negotiate and conclude an agreement within a reasonable time with that other government and shall, with respect to the terms and conditions of that agreement, accord that other government equality of treatment in the context of the different needs and circumstances of the provinces, and the Government of Canada shall cause the agreement to be placed before the Parliament of Canada for approval under this section.

Equality of treatment
of territories

(6) Subsection (5) applies in respect of territories so as to accord a territory equality of treatment in relation to another territory in the context of the different needs and circumstances of the territories.

Application of section
to aboriginal
governments

(7) This section applies, with such modifications as the circumstances require, in respect of any agreement entered into between a government of the Aboriginal peoples of Canada and the Government of Canada or the government of a province or territory.

Definition of
"agreement"

(8) In this section, "agreement" includes any agreement, contract or other arrangement."

18. The said Act is further amended by adding thereto, immediately before section 128 thereof, the following section:

DRAFT

Non-derogation

"127. (1) For greater certainty, except to the extent that is otherwise agreed by the Aboriginal peoples concerned, none of the provisions referred to in subsection (2), and no agreement made under any provision referred to in subsection (2), abrogates or derogates from

- (a) the legislative authority of the Parliament of Canada under class 24 of section 91 consistent with section 91A, as modified by section 95E;
- (b) the federal fiduciary responsibility for Aboriginal peoples; or
- (c) the aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada, including
 - (i) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763,
 - (ii) any rights or freedoms that now exist by way of land claims agreements or may be so acquired,
 - (iii) the inherent right of self-government referred to in section 35.1 of the *Constitution Act, 1982* and the powers and jurisdictions set out in self-government agreements, and
 - (iv) any rights or freedoms relating to the exercise or protection of their languages, cultures or traditions.

Application

- (2) This section applies in relation to the following provisions:
 - (a) paragraph (c) of class 10 of section 92 and all that portion of section 92 following class 16 thereof;
 - (b) class 12A of section 92;
 - (c) sections 92B to 92D;

- (d) sections 93A to 93D;
- (e) sections 95A to 95D;
- (f) section 95E;
- (g) section 106A; and
- (h) section 126A."

**SPECIAL RULES RELATING TO
REPRESENTATION IN THE HOUSE OF COMMONS**

19. (1) Notwithstanding sections 41 and 44 of the *Constitution Act, 1982*, the amendments in this section are made in accordance with section 41 of that Act.

(2) Rules 1 and 2 in subsection 51(1) of the *Constitution Act, 1867* are repealed and the following substituted therefor:

Rule

"1. After the completion of the 1991 decennial census, the House of Commons shall consist of three hundred and thirty-seven members and there shall be assigned to each of the provinces and territories the following numbers of members: one hundred and seventeen for Ontario; ninety-three for Quebec; eleven for Nova Scotia; ten for New Brunswick; fourteen for Manitoba; thirty-six for British Columbia; four for Prince Edward Island; twenty-eight for Alberta; fourteen for Saskatchewan; seven for Newfoundland; one for the Yukon Territory; and two for the Northwest Territories."

Adjusted
representation

(3) After the completion of the 1996 census, the representation of the provinces in the House of Commons shall be readjusted by adding eight members, of which three shall be for Ontario, three for British Columbia and two for Alberta.

TRANSITIONAL

First election
of senators

20. (1) Notwithstanding section 27 of the *Constitution Act, 1867*, as enacted by section 4 of this amendment, Parliament may provide for the first general election of senators to take place within one year after this section comes into force, whether or not it occurs at the same time as a general election of the House of Commons.

Delay of
application

(2) Subsection 23(5) of the *Constitution Act, 1867*, as enacted by section 4 of this amendment, does not apply for one year after this section comes into force.

Continu-
ation

(3) Until the first general election of senators is completed, the provisions enacted by sections 3 and 4 of this amendment do not apply and the Senate shall continue as if those provisions had not come into force.

DRAFT

Constitution Act, 1871

21. Section 2 of the *Constitution Act, 1871* is repealed and the following substituted therefor:

Establishment of new
provinces in
territories in Canada

"2. (1) The Parliament of Canada may from time to time establish a new province in any territory forming for the time being part of the Dominion of Canada, but not included in any province thereof, at the request of the legislative authority of the territory, and may, at the time of such establishment, make provision for the constitution and administration of any such province, and for the passing of laws for the peace, order and good government of the province, and for its representation in the House of Commons.

First Ministers'
Conference

(2) Before a new province is established under subsection (1), a conference of the Prime Minister of Canada and the first ministers of the provinces shall be convened to take into account the views of the provinces."

22. Section 3 of the said Act is renumbered as subsection 3(1) and is further amended by adding thereto the following subsection:

Consent of territories

"(2) The Parliament of Canada may not, pursuant to subsection (1), alter the limits of any territory forming for the time being part of the Dominion of Canada, except with the consent of the legislative authority of the territory."

Alberta Act

23. The *Alberta Act* is amended by adding thereto, immediately after section 24 thereof, the following section:

Definitions

"Métis Settlements
General Council"
« *Conseil ...* »

"Métis settlement
land"
« *terres ...* »

Expropriation

Exemption from
seizure

"24.1 (1) In this section,

"Métis Settlements General Council" means the Métis Settlements General Council incorporated by the *Métis Settlements Act* (Alberta);

"Métis settlement land" means land held in fee simple by the Métis Settlements General Council under letters patent from Her Majesty in right of Alberta.

(2) The fee simple estate in Métis settlement land, or any interest in it less than fee simple, may not be acquired through expropriation by

(a) any person,

(b) Her Majesty in right of Alberta, or

(c) Her Majesty in right of Canada, except with the consent of the Governor in Council after consultation between the Government of Canada and the Métis Settlements General Council,

but an interest less than fee simple may be acquired in that land in a manner permitted by the *Métis Settlements Land Protection Act* (Alberta).

(3) The fee simple estate in Métis settlement land is exempt from seizure and sale under court order, writ of execution or any other process whether judicial or extra-judicial.

DRAFT

Restriction on
Legislature

(4) No Act of the Legislature may

(a) amend or repeal the *Métis Settlements Land Protection Act* (Alberta),

(b) alter or revoke letters patent granting Métis settlement land to the Métis Settlements General Council, or

(c) dissolve the Métis Settlements General Council or result in its being composed of persons who are not settlement members,

without the agreement of the Métis Settlements General Council.

Restriction on
Parliament of Canada

(5) No Act of the Parliament of Canada may dissolve the Métis Settlements General Council or result in its being composed of members who are not settlement members without the agreement of the Métis Settlements General Council.

Application of laws

(6) Nothing in this section shall be construed as limiting

(a) the application of the laws of Alberta or Canada to, or

(b) the jurisdiction of the Legislature of Alberta or the Parliament of Canada to enact laws in and for Alberta applicable to,

Métis settlement land and any activities on or in respect of that land, except to the extent necessary to give effect to this section.

Non-derogation

(7) Nothing in this section shall be construed so as to abrogate or derogate from any rights referred to in Part II of the *Constitution Act, 1982*."

Constitution Act, 1982

24. Section 3 of the *Constitution Act, 1982* is repealed and the following substituted therefor:

Democratic rights of
citizens

"3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly of a province and to be qualified for membership therein."

25. Section 25 of the said Act is amended by striking out the word "and" at the end of paragraph (a) thereof, by adding the word "and" at the end of paragraph (b) thereof and by adding thereto the following paragraph:

"(c) any rights or freedoms relating to the exercise or protection of their languages, cultures or traditions."

26. Subsection 32(1) of the said Act is amended by striking out the word "and" at the end of paragraph (a) thereof, by adding the word "and" at the end of paragraph (b) thereof and by adding thereto the following paragraph:

"(c) to all legislative bodies and governments of the Aboriginal peoples of Canada in respect of all matters within the authority of their respective legislative bodies."

27. The said Act is further amended by adding thereto, immediately after section 33 thereof, the following section:

Application of section
33 to aboriginal
legislative bodies

"33.1 Section 33 applies to legislative bodies of the Aboriginal peoples of Canada with such modifications, consistent with the purposes of the requirements of that section, as are appropriate to the circumstances of the Aboriginal peoples concerned."

DRAFT

28. (1) Subsection 35(1) of the English version of the said Act is amended by substituting the expression "Aboriginal peoples of Canada" for the expression "aboriginal peoples of Canada".

(2) Subsection 35(2) of the said Act is repealed and the following substituted therefor:

Definition of
"Aboriginal peoples
of Canada"

"(2) In the Constitution of Canada, "Aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada."

(3) Subsection 35(4) of the said Act is repealed and the following substituted therefor:

Access by all
Aboriginal peoples

"(4) For greater certainty, all the Aboriginal peoples of Canada have access to the aboriginal and treaty rights recognized and affirmed in this Part that pertain to them."

29. Section 35.1 of the said Act is repealed and the following substituted therefor:

Inherent right of self-
government

"35.1 (1) The Aboriginal peoples of Canada have the inherent right of self-government within Canada.

Three orders of
government

(2) The right referred to in subsection (1) shall be interpreted in a manner consistent with the recognition of the governments of the Aboriginal peoples of Canada as constituting one of three orders of government in Canada.

Contextual statement

(3) The exercise of the right referred to in subsection (1) includes the authority of duly constituted legislative bodies of the Aboriginal peoples, each within its own jurisdiction,

(a) to safeguard and develop their languages, cultures, economies, identities, institutions and traditions, and

(b) to develop, maintain and strengthen their relationship with their lands, waters and environment,

so as to determine and control their development as peoples according to their own values and priorities and to ensure the integrity of their societies.

Issues before court or
tribunal

(4) Where an issue arises in any proceedings in relation to the scope of the inherent right of self-government, or in relation to an assertion of that right, a court or tribunal

(a) before making any final determination of the issue, shall inquire into the efforts that have been made to resolve the issue through negotiations under section 35.2 and may order the parties to take such steps as may be appropriate in the circumstances to effect a negotiated resolution; and

(b) in making any final determination of the issue, shall take into account subsection (3).

Land

(5) Neither the right referred to in subsection (1) nor anything in subsection 35.2(1) creates new aboriginal rights to land or abrogates or derogates from existing aboriginal or treaty rights to land, except as otherwise provided in self-government agreements negotiated under section 35.2.

DRAFT

Commitment to
negotiate

35.2 (1) The government of Canada, the provincial and territorial governments and the Aboriginal peoples of Canada, including the Indian, Inuit and Métis peoples of Canada, in the various regions and communities of Canada shall negotiate in good faith the implementation of the right of self-government, including issues of

- (a) jurisdiction,
- (b) lands and resources, and
- (c) economic and fiscal arrangements,

with the objective of concluding agreements elaborating relationships between governments of Aboriginal peoples and the government of Canada and provincial or territorial governments.

Process of negotiation

(2) Negotiations referred to in subsection (1) may be initiated only by the representatives or governments of the Aboriginal peoples concerned, and shall, unless otherwise agreed by the parties to the negotiations, be conducted in accordance with the process for negotiations outlined in an accord entered into by the government of Canada, the provincial and territorial governments and representatives of the Aboriginal peoples.

Equitable access

(3) All the Aboriginal peoples of Canada shall have equitable access to negotiations referred to in subsection (1).

Agreements may
allow participation of
all residents

(4) An agreement negotiated under this section may provide for bodies or institutions of self-government that are open to the participation of all residents of the region to which the agreement relates as determined by the agreement.

Different
circumstances

(5) The parties to negotiations referred to in subsection (1) shall have regard to the different circumstances of the various Aboriginal peoples of Canada.

Where rights are
treaty rights

(6) Where an agreement negotiated under this section

(a) is set out in a treaty or land claims agreement, or in an amendment to a treaty including a land claims agreement, or

(b) contains a declaration that the rights of the Aboriginal peoples set out in the agreement are treaty rights,

the rights of the Aboriginal peoples set out in the agreement are treaty rights under subsection 35(1).

Non-derogation

(7) Nothing in this section abrogates or derogates from the rights referred to in section 35 or 35.1, or from the enforceability thereof, and nothing in subsection 35.1(3) or in this section makes those rights contingent on the commitment to negotiate under this section.

Delay of justiciability

35.3 (1) Except in relation to self-government agreements concluded after the coming into force of this section, section 35.1 shall not be made the subject of judicial notice, interpretation or enforcement for five years after that section comes into force.

For greater certainty

(2) For greater certainty, nothing in subsection (1) prevents the justiciability of disputes in relation to

(a) any existing rights that are recognized and affirmed in subsection 35(1), including any rights relating to self-government, when raised in any court; or

(b) the process of negotiation under section 35.2.

Idem

(3) Nothing in subsection (1) abrogates or derogates from section 35.1 or renders section 35.1 contingent on the happening of any future event, and subsection (1) merely delays for five years judicial notice, interpretation or enforcement of that section.

DRAFT

Application of laws

35.4 (1) Except as otherwise provided by the Constitution of Canada, the laws of Canada and the laws of the provinces and territories continue to apply to the Aboriginal peoples of Canada, subject nevertheless to being displaced by laws enacted by legislative bodies of the Aboriginal peoples according to their authority.

Peace, order and good government in Canada

(2) No aboriginal law or any other exercise of the inherent right of self-government under section 35.1 may be inconsistent with federal or provincial laws that are essential to the preservation of peace, order and good government in Canada.

Legislative authority not extended

(3) For greater certainty, nothing in this section extends the legislative authority of the Parliament of Canada or the legislatures of the provinces or territories.

Affirmative action

35.5 (1) Subsections 6(2) and (3) of the *Canadian Charter of Rights and Freedoms* do not preclude a legislative body or government of the Aboriginal peoples of Canada from exercising authority pursuant to this Part through affirmative action measures that have as their object the amelioration of conditions of individuals or groups who are socially or economically disadvantaged or the protection and advancement of aboriginal languages and cultures.

For greater certainty

(2) For greater certainty, nothing in this section abrogates or derogates from section 15, 25 or 28 of the *Canadian Charter of Rights and Freedoms* or from section 35.7 of this Part.

Interpretation of treaty rights

35.6 (1) The treaty rights referred to in subsection 35(1) shall be interpreted in a just, broad and liberal manner taking into account their spirit and intent and the context of the specific treaty negotiations relating thereto.

Commitment to processes to clarify, implement or rectify treaties

(2) The government of Canada is committed to establishing treaty processes to clarify or implement treaty rights and, where the parties agree, to rectify terms of the treaties, and is committed, where requested by the Aboriginal peoples of Canada concerned, to participating in good faith in the process that relates to them.

Participation of
provinces and
territories

(3) The governments of the provinces and territories are committed, to the extent that they have jurisdiction, to participating in good faith in the processes referred to in subsection (2), where jointly invited by the government of Canada and the Aboriginal peoples of Canada concerned or where it is specified that they will do so under the terms of the treaty concerned.

Spirit and intent

(4) The participants in the processes referred to in subsection (2) shall have regard to, among other things and where appropriate, the spirit and intent of the treaties, as understood by the Aboriginal peoples concerned.

Equitable access

(5) For greater certainty, all those Aboriginal peoples of Canada who have treaty rights shall have equitable access to the processes referred to in this section.

Non-derogation

(6) Nothing in this section abrogates or derogates from any rights of the Aboriginal peoples of Canada who are not parties to a particular treaty.

Rights of the
Aboriginal peoples of
Canada guaranteed
equally to both sexes

35.7 Notwithstanding any other provision of this Act, the rights of the Aboriginal peoples of Canada referred to in this Part are guaranteed equally to male and female persons.

Commitment to
participate in
constitutional
conference

[35.8* The government of Canada and the provincial governments are committed to the principle that, before any amendment described in section 45.1 is made,

(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

* The final wording of this provision (based on existing section 35.1 added in 1984) is to be revisited when the consent mechanism is finalized for section 45.1, at which time concerns will be addressed in respect of amendments directly referring to Aboriginal peoples in some but not all regions of Canada.

DRAFT

(b) the Prime Minister of Canada will invite representatives of the Aboriginal peoples of Canada to participate in the discussions on that item.]

Constitutional
conferences

35.9 (1) At least four constitutional conferences on aboriginal issues composed of the Prime Minister of Canada, the first ministers of the provinces, representatives of the Aboriginal peoples of Canada and elected representatives of the governments of the territories shall be convened by the Prime Minister of Canada, the first to be held no later than 1996 and the three subsequent conferences to be held one every two years thereafter.

Agenda

(2) Each conference convened under subsection (1) shall have included in its agenda such items as are proposed by the representatives of the Aboriginal peoples of Canada.

Powers of territories
not extended

35.91 For greater certainty, nothing in this Part extends the powers of the legislative authorities or governments of the territories."

30. (1) All that portion of subsection 36(1) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

Commitment to
promote equal
opportunities

"36. (1) Without altering the legislative authority of Parliament, the provincial legislatures or the territorial legislative authorities, or the rights of any of them with respect to the exercise of their legislative authority, Parliament, the provincial legislatures and the territorial legislative authorities, together with the government of Canada and the provincial and territorial governments, are committed to"

(2) Subsection 36(1) of the said Act is further amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(d) ensuring the provision and maintenance of reasonably comparable economic infrastructure of a national nature in each province and territory of Canada."

therefor: (3) Subsection 36(2) of the said Act is repealed and the following substituted

Commitment
respecting
equalization payments

"(2) Parliament and the government of Canada are committed to making equalization payments so that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

Consultation

(3) The government of Canada is committed to meaningful consultation with provincial governments before introducing legislation relating to making equalization payments.

Commitment to
regional economic
development

(4) Parliament, the provincial legislatures and the territorial legislative authorities, together with the government of Canada and the provincial and territorial governments, are committed to the promotion of regional economic development to reduce economic disparities."

31. The said Act is further amended by adding thereto, immediately after Part III thereof, the following Parts:

"PART III.1

THE SOCIAL AND ECONOMIC UNION

Commitment
respecting social and
economic union

36.1 (1) Without altering the authority of Parliament, the provincial legislatures or the territorial legislative authorities, or of the government of Canada or the governments of the provinces or territories, or the rights of any of them with respect to the exercise of their authority, Parliament, the provincial legislatures and the territorial legislative authorities, together with the government of Canada and the provincial and territorial governments, are committed to the principle of the preservation and development of the Canadian social and economic union.

Social union

(2) The preservation and development of the social union includes, but is not limited to, the following policy objectives:

- (a) providing throughout Canada a health care system that is comprehensive, universal, portable, publicly administered, and accessible;
- (b) providing adequate social services and benefits to ensure that all individuals resident in Canada have reasonable access to housing, food and other basic necessities;
- (c) providing high quality primary and secondary education to all individuals resident in Canada and ensuring reasonable access to post-secondary education;
- (d) protecting the rights of workers to organize and bargain collectively; and
- (e) protecting, preserving and sustaining the integrity of the environment for present and future generations.

Economic union

(3) The preservation and development of the economic union includes, but is not limited to, the following policy objectives:

- (a) working together to strengthen the Canadian economic union;
- (b) the free movement of persons, goods, services and capital;
- (c) the goal of full employment;
- (d) ensuring that all Canadians have a reasonable standard of living; and
- (e) ensuring sustainable and equitable development.

Interpretation of
Charter rights and
freedoms not
modified

Monitoring

(4) This Part does not have the effect of modifying the interpretation of the rights and freedoms referred to in the *Canadian Charter of Rights and Freedoms*.

36.2 The Prime Minister of Canada and the first ministers of the provinces shall, at a conference convened pursuant to section 37.1, establish a mechanism to monitor the progress made in relation to the objectives stated in subsections 36.1(2) and (3).

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PART IVFRAMEWORK FOR CERTAIN EXPENDITURES
BY THE GOVERNMENT OF CANADA

Framework for
certain expenditures
of money

37. (1) The government of Canada and the governments of the provinces are committed to establishing a framework to govern expenditures of money in the provinces by the government of Canada in areas of exclusive provincial jurisdiction that would ensure, in particular, that such expenditures

(a) contribute to the pursuit of national objectives;

(b) reduce overlap and duplication;

(c) respect and not distort provincial priorities; and

(d) ensure equality of treatment of provinces while recognizing their different needs and circumstances.

Review at First
Ministers'
Conferences

(2) After establishing a framework pursuant to subsection (1), the Prime Minister of Canada and the first ministers of the provinces shall review the progress made in achieving the objectives set out in the framework once each year at conferences convened pursuant to section 37.1.

PART IV.1FIRST MINISTERS' CONFERENCES

First Ministers'
Conferences

37.1 A conference of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, the first within twelve months after this Part comes into force."

32. Sections 40 to 42 of the said Act are repealed and the following substituted therefor:

Compensation

"40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

Amendment by
unanimous consent

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(b) the powers of the Senate and the selection of senators;

(c) the number of senators by which a province or territory is entitled to be represented in the Senate and the qualifications of senators set out in the *Constitution Act, 1867*;

[(c.1)* the number of senators by which the Aboriginal peoples of Canada are entitled to be represented in the Senate and the qualifications of such senators;]

(d) an amendment to section 51A of the *Constitution Act, 1867*;

(e) subject to section 43, the use of the English or the French language;

(f) subject to subsection 42(1), the Supreme Court of Canada;

* The issue of Aboriginal representation is to be discussed in the autumn of 1992, according to the Consensus Report.

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(g) an amendment to section 2 or 3 of the *Constitution Act, 1871*; and

(h) an amendment to this Part.

Amendment by
general procedure

42. (1) An amendment to the Constitution of Canada in relation to the method of selecting judges of the Supreme Court of Canada may be made only in accordance with subsection 38(1).

Exception

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to the matter referred to in subsection (1).

New provinces

42.1 Subsection 38(1) and sections 41 and 42 do not apply to allow a province that is established pursuant to section 2 of the *Constitution Act, 1871* after the coming into force of this section to authorize amendments to the Constitution of Canada and, for greater certainty, all other provisions of this Part apply in respect of such a province."

[33. The said Act is further amended by adding thereto, immediately after section 45 thereof, the following section:

Amendments where
Aboriginal peoples of
Canada directly
referred to

"45.1* (1) An amendment to the Constitution of Canada that directly refers to, or that amends a provision that directly refers to, one or more of the Aboriginal peoples of Canada or their governments, including

(a) section 2, as it relates to the Aboriginal peoples of Canada,** class 24 of section 91, and sections 91A, 95E and 127 of the *Constitution Act, 1867*, and

(b) section 25 and Part II of this Act and this section,

* A mechanism for obtaining aboriginal consent would be worked out prior to the tabling of a Constitution resolution in Parliament.

** A reference to any provision relating to aboriginal representation in the Senate would be added here.

Initiation of
amendment
procedures

may be made by proclamation issued by the Governor General under the Great Seal of Canada only where the amendment has been authorized in accordance with this Part and has received the substantial consent of the Aboriginal peoples so referred to.

(2) Notwithstanding section 46, the procedures for amending the Constitution of Canada in relation to any matter referred to in subsection (1) may be initiated by any of the Aboriginal peoples of Canada directly referred to as provided in subsection (1)."]

34. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(d) any other amendment to the Constitution of Canada."

35. Section 61 of the said Act is repealed and the following substituted therefor:

References

"61. A reference to the Constitution Act, 1982 or a reference to the *Constitution Acts, 1867 to 1982* shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

(Bilateral amendment - New Brunswick and Canada)

1. The *Constitution Act, 1982* is amended by adding thereto, immediately after section 16 thereof, the following section:

English and French
linguistic
communities in New
Brunswick

"16.1 (1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

Role of the legislature
and government of
New Brunswick

(2) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed."



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